

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

BRYANT SAMUEL and ANNETTE SAMUEL

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

(b) County of Residence of First Listed Plaintiff _____

County of Residence of First Listed Defendant _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 |

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C SECTION 1692

Brief description of cause:
Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S)

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

DATE

SIGNATURE OF ATTORNEY OF RECORD

04/30/2013

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

BRYANT SAMUEL and ANNETTE SAMUEL :

CIVIL ACTION

v.

NO.

NCO FINANCIAL SYSTEMS, INC. :

:

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

04/30/2013
Date

Craig Thor Kimmel
Attorney-at-law

Plaintiffs, Bryant & Annette Samuel
Attorney for

215-540-8888
Telephone

877-788-2864
FAX Number

kimmel@creditlaw.com
E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 163 Waldo Rd., Pasadena, MD 21122

Address of Defendant: 507 Prudential Road, Horsham, PA 19044

Place of Accident, Incident or Transaction: _____

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases

(Please specify) 15 U.S.C. § 1692

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel

counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 04/30/2013

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 04/30/2013

Attorney-at-Law

57100

Attorney I.D.#

Defendant

(Unlawful Debt Collection Practices)

1 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
2 under the laws of the United States.

3
4 3. Defendant conducts business and has its principal office located in
5 the Commonwealth of Pennsylvania; therefore, personal jurisdiction is
6 established.

7
8 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

9 **PARTIES**

10 5. Plaintiffs are natural persons residing in Pasadena, Maryland at the
11 time of the alleged harassment.

12 6. Plaintiffs are persons granted a cause of action under the FDCPA.
13 See 15 U.S.C. § 1692k(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687
14 (E.D. Pa. Dec. 22, 2000).

15
16 7. Defendant is a national debt collection company with its corporate
17 headquarters located at 507 Prudential Road, Horsham, Pennsylvania 19044.

18
19 8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §
20 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

21 9. Defendant acted through its agents, employees, officers, members,
22 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
23 representatives, and insurers.
24
25

FACTUAL ALLEGATIONS

10. At all relevant times, Defendant was attempting to collect an alleged consumer debt from Plaintiffs.

11. Upon information and belief, the alleged debt arose out of transactions, which were primarily for personal, family, or household purposes.

12. Beginning in January 2013 and continuing through April 2013, Defendant repeatedly and continuously contacted Plaintiffs on their home telephone in its attempts to collect a debt.

13. Plaintiffs do not owe the debt that Defendant was attempting to collect.

14. Instead, the debt Defendant was attempting to collect is owed by their son, who has not lived at their residence since 1999.

15. During the relevant period, Defendant called Plaintiffs' home telephone between one (1) and four (4) times per day.

16. On multiple occasions, Plaintiffs spoke with several of Defendant's collectors to inform them that the person being called cannot be contacted their number and to stop calling them.

17. Defendant failed to investigate the information and/or update its records to avoid the further harassment of Plaintiffs.

18. Moreover, Defendant did not possess any information to contradict

1 Plaintiffs' statements.

2 19. Nevertheless, Defendant persisted in calling Plaintiffs about a debt of
3 their son.
4

5 20. Knowing that Plaintiffs did not wish to be called further, the only
6 purpose for disregarding these wishes would be to harass them.

7 21. Most recently, Defendant called Plaintiffs on April 22, 2013.
8

9 22. In addition to speaking with Defendant's collectors to try to stop the
10 collection calls, Plaintiffs also followed Defendant's automated prompt system in
11 an attempt to have their phone number removed from Defendant's call list.

12 23. However, once again, Plaintiffs' attempts to stop the collection calls
13 were unsuccessful, as Defendant continued to call Plaintiffs' home on a repetitive
14 and continuous basis.
15

16 24. Finally, in its attempts to collect the debt, Defendant left numerous
17 messages on Plaintiffs' home answering machine stating that it was a debt
18 collection agency attempting to collect a debt.
19

20 25. This was extremely embarrassing to Plaintiffs as they do not owe a
21 debt, and on at least one occasion, Plaintiffs' friends overheard the message that
22 Defendant left.
23

24 26. Defendant called Plaintiffs on a repetitive and continuous basis with
25 the intent of harassing, knowing Plaintiffs were not the correct persons it sought.

1 27. By continuously calling over a debt they did not owe, and failing to
2 update its records to avoid the further harassment of Plaintiffs, Defendant engaged
3 in conduct which as the natural consequences of harassing the recipient.
4

5 28. Upon information and belief, information was readily available to
6 Defendant, and/or was available in the public domain, that the number it was
7 calling belonged to Plaintiffs and/or was associated with Plaintiffs' home address.
8

9 29. The repetitive calls to Plaintiffs were harassing, aggravating and
10 highly intrusive.

11 30. Plaintiff has spent time and effort dealing with these calls and trying
12 to stop the collection calls to them for another person.
13

14 **DEFENDANT VIOLATED THE**
15 **FAIR DEBT COLLECTION PRACTICES ACT**

16 **COUNT I**

17 31. Defendant's conduct, detailed in the preceding paragraphs, violated 15
18 U.S.C. § 1692b(3).

19 a. Section 1692b(3) of the FDCPA prohibits a debt collector from
20 communicating with any person other than a consumer more than
21 once unless requested to do so by such person or unless the debt
22 collector reasonably believes that the earlier response of such
23 person is erroneous or incomplete and that such person now has
24 correct or complete location information.
25

1 b. Here, Defendant violated §1692b(3) of the FDCPA by
2 communicating with Plaintiffs more than once about another
3 person's debt, despite having been notified that it was calling the
4 wrong person.
5

6 **COUNT II**

7 32. Defendant's conduct, as detailed in the preceding paragraphs, violated
8 15 U.S.C. §1692c(a)(1).
9

10 a. A debt collector violates §1692c(a)(1) of the FDCPA by
11 communicating with the consumer at any unusual time or place or
12 a time or place known or which should be known to be
13 inconvenient to the consumer, including communication between
14 a debt collector and consumer prior to 8:00 a.m. or after 9:00 p.m.
15

16 b. Here, Defendant violated §1692c(a)(1) of the FDCPA by placing
17 numerous collection calls to Plaintiffs at their home residence
18 about another individual's debt, which was an inconvenient place
19 for Plaintiffs to receive collection calls.
20

21 **COUNT III**

22 33. Defendant's conduct, as detailed in the preceding paragraphs, violated
23 15 U.S.C. §§1692d and 1692d(5).
24

25 a. A debt collector violates §1692d of the FDCPA by engaging in

1 conduct of the natural consequence of which is to harass, oppress,
2 or abuse any person in connection with the collection of a debt.

3
4 b. A debt collector violates §1692d(5) of the FDCPA by causing a
5 telephone to ring or engaging any person in telephone conversation
6 repeatedly or continuously with intent to annoy, abuse, or harass
7 any person at the called number.

8
9 c. Here, Defendant violated §§1692d and 1692d(5) of the FDCPA by
10 calling Plaintiffs nearly every day, sometimes calling four (4)
11 times a day, about another person's debt with the intent to annoy,
12 abuse, and harass Plaintiffs into paying the debt.

13
14 **COUNT IV**

15 34. Defendant's conduct, as detailed in the preceding paragraphs, violated
16 15 U.S.C. §1692f.

17
18 a. A debt collector violates §1692f of the FDCPA by using unfair or
19 unconscionable means to collect or attempt to collect any debt.

20
21 a. Here, Defendant violated §1692f of the FDCPA by failing to
22 update its records to stop the collection calls to Plaintiffs and
23 leaving voicemail messages on Plaintiffs' home answering
24 machine announcing that it was a debt collector and calling to
25 collect a debt, which was overheard by people at their house.

WHEREFORE, Plaintiffs, BRYANT SAMUEL and ANNETTE SAMUEL, respectfully pray for a judgment as follows:

- a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiffs pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiffs, BRYANT SAMUEL and ANNETTE SAMUEL, demand a jury trial in this case.

DATED: 04/30/13

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

By: _____

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